

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| <b>UNITED STATES OF AMERICA</b> | ) |                              |
|                                 | ) |                              |
| <b>v.</b>                       | ) | <b>CR. NO. 2:06cr275-WKW</b> |
|                                 | ) |                              |
| <b>JACOB WARNER</b>             | ) |                              |

**UNOPPOSED MOTION TO CONTINUE TRIAL**

**COMES NOW** undersigned counsel and respectfully moves for a continuance of the trial of this matter, presently scheduled for August 6, 2007. In support of this motion, counsel will show:

1. On March 30, 2007, the Defendant's attorney, William R. Blanchard, filed a motion to withdraw as attorney of record because of a conflict of interest. (Doc #22).
2. On April 4, 2007, the undersigned counsel was appointed by the Court to represent Mr. Warner in all further proceedings. (Doc # 28). Counsel contacted Mr. Blanchard and is in receipt of the discovery that was provided to previous counsel.
3. On April 4, 2007, I attempted to contact Mr. Warner via telephone number (334) 262-8810, provided by previous counsel as Warner's contact number. A voice recording by the carrier indicated that the line has been "disconnected or is no longer in service."
4. On April 6, 2007, Mr. Warner telephoned my office at 9:40am. I was unavailable at the time, and he did not leave a telephone number. This is the last contact my office has had with Mr. Warner.

5. On or about April 10, 2007, US Probation Officer Mr. Bernard Ross contacted my office to inform me that he has had no contact with Mr. Warner and that Warner was in violation of his conditions of release.

6. Mr. Ross has not had contact with Warner since March 2007, and I have never met or spoken with Mr. Warner. Letters sent to his residence have been returned and marked by the USPS as “Undeliverable. No forwarding address on file”.

7. Although Rule 43 of the Federal Rules of Criminal Procedure allows a defendant to waive his presence during some portion of a trial, the Supreme Court has held that if a defendant is not present at the beginning of trial, the trial may not proceed in the defendant’s absence. Crosby v. United States, 506 U.S. 255 (1993). A defendant who is voluntarily absent may only be tried *in absentia* if present at the commencement of trial. United States v. Arias, 984 F.2d 1139 (11<sup>th</sup> Cir. 1993). For purposes of Rule 43, a trial begins or commences when jury selection starts. United States v. Bradford, 237 F.3d 1306 (11<sup>th</sup> Cir. 2001).

8. The Court may certainly wait until the scheduled trial date of August 6, 2007, and see if Warner shows up for trial before deciding to continue the matter. However, even though the case does not appear to present issues that are unusual or complex, and discovery is not excessive, I have never spoken with Mr. Warner to discuss and evaluate the issues, develop a trial strategy with my client, and appropriately advise him. Even if Mr. Warner arrived in my office today, there would be insufficient time to adequately prepare my client for trial.

9. This motion is brought in good faith and not for any dilatory purpose or improper motive.

10. Counsel for the government has been contacted concerning this motion and has no objections to a continuance. Neither party will be prejudiced by such a delay.

11. This Motion is made in the interest of justice.

**WHEREFORE** premises considered, undersigned counsel respectfully requests that the jury trial set for August 6, 2007, be continued and for such other and further relief as the court finds just and equitable.

Respectfully submitted this 25<sup>th</sup> day of July 2007.

s/John M. Poti  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Christopher A. Snyder, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

s/John M. Poti  
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